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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LATONIA SMITH,

Plaintiff(s),

-vs-

CAESARS ENTERTAINMENT
CORPORATION, a Delaware corporation;
PHWLTV, LLC d/b/a PLANET
HOLLYWOOD RESORT AND CASINO, a
Nevada limited liability company;
SHANNON PIERCE; ETHAN THOMAS,

Defendant(s).

Case No.: 2:19-cv-00856-GMN-DJA

**DEFENDANT SHANNON PIERCE'S
REPLY IN SUPPORT OF MOTION TO
CONSOLIDATE CASES**

Defendant Shannon Pierce ("Ms. Pierce"), by and through her counsel of record, Snell & Wilmer L.L.P., hereby submits her Reply in support of her Motion to Consolidate Case No. 2:19-cv-00824-GMN-GWF (the "Fennemore Action") and Case No. 2:19-cv-00856-GMN-GWF (the "Pierce Action") [ECF No. 48].

This Reply is based on the attached memorandum of points and authorities, the papers and pleadings on file with the Court, and such other written or oral argument and other materials that may be presented prior to the Court's decision on the Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Based on several flawed premises, Ms. Smith's Opposition to the Motion to Consolidate falls short. Ms. Smith's first flawed premise is that Fennemore Craig ("Fennemore") and Fennemore attorney Ms. Pierce previously attempted to combine the Fennemore Action and the Pierce Action. This is inaccurate. Rather, Fennemore and Ms. Pierce previously filed notices of related cases as required by the Local Rules. *See* ECF No. 4.

Ms. Smith's second flawed premise is that the Pierce Action should be remanded back to state court. Again, this is incorrect. In the Pierce Complaint, Ms. Smith expressly pleaded a cause of action under 42 U.S.C. § 2000a, which presents a federal question over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331. *See* Pl.'s First Amd. Compl., ECF No. 1-1, at ¶¶94-98.

Ms. Smith's third flawed premise is that the Fennemore Action and the Pierce Action "are different as Pierce [in the Pierce Action] was mainly acting in her individual capacity when she engaged in the actions asserted in Ms. Smith's Complaint," and "Fennemore Craig is being sued in their capacity as a law firm who engaged in and had employees (even those who are not attorneys) engaged in the conspiracy to target Ms. Smith." As the side-by-side analysis presented in the Motion to Consolidate demonstrates, Ms. Smith's operative complaints in both actions are nearly identical and present the same issues of law and fact.

Ms. Smith's fourth flawed premise is that "consolidation would be inefficient and create prejudice and confusion" and that the Fennemore Action and Pierce Action "are at different stages." Pl.'s Resp., ECF No. 54, at 2:20-21. This, again, is false; consolidating the two actions will only serve to reduce duplicative filings and repetitive discovery while simultaneously limiting the possibility of inconsistent results between the cases. Both cases are at the same stage of litigation. As of now, discovery has opened in both cases on a substantially similar timeline and motions to dismiss are pending. And as explained in detail below, Ms. Smith apparently seeks to use the separate actions to prejudice the defendants by improperly limiting their participation in discovery and/or by presumably trying to take multiple depositions of the same witnesses in each separate

1 case. For each of these reasons, Ms. Smith's Opposition fails, and the Court should grant
2 Fennemore's and Ms. Pierce's Motion to Consolidate the actions.

3 **II. LEGAL ARGUMENT**

4 **A. Fennemore and Ms. Pierce Previously Filed a Notice of Related Cases as** 5 **Required under the Local Rules.**

6 Ms. Smith inaccurately contends that Fennemore and Ms. Pierce have already attempted to
7 combine the Fennemore Action and the Pierce Action. But Fennemore and Ms. Pierce only
8 previously filed a notice of related cases [ECF No. 4] as required by the Local Rules in each of the
9 respective actions. *See* LR 42-1(a) (mandating that a party who has reason to believe that an action
10 on file is related to another action on file "must file in each action and serve on all parties in each
11 action a notice of related cases.") (emphasis added). Indeed, this Court promptly took jurisdiction
12 over the Pierce Action as a related case. This does not mean, however, that either Fennemore or
13 Ms. Smith have previously attempted to "combine" the cases. The Court should not be persuaded
14 by Ms. Smith's suggestion that the Court already considered the relief that Fennemore and Ms.
15 Pierce seek in the instant Motion to Consolidate.

16 **B. Ms. Smith's Motion to Remand does not Impact Consolidation.**

17 Ms. Smith also contends that the Court should not consolidate the Fennemore Action and
18 the Pierce Action because the Pierce Action should be remanded to state court. This argument fails
19 for the same reasons detailed at length in Ms. Pierce's Response to Ms. Smith's Motion to Remand
20 [ECF No. 28], as well as co-defendants' Caesars Entertainment Corporation, PHWLTV, and Ethan
21 Thomas' Response to Ms. Smith's Motion to Remand [ECF No. 29]. Ms. Smith's argument yet
22 again fails to acknowledge that she specifically pleaded a cause of action under 42 U.S.C. § 2000a,
23 which presents a federal question over which this Court has jurisdiction pursuant to 28 U.S.C. §
24 1331. *See* Pl.'s First Amd. Compl., ECF No. 1-1, at ¶¶94-98.

25 As Ms. Smith's Motion to Remand fails, it does not present a basis to deny consolidating
26 the two near-identical actions. Ms. Smith's argument that "the only reason why defendants removed
27 the [Pierce] case and why the court is holding on to the case is for delay, prejudicing the Plaintiff
28 in discovery" is likewise misguided and unsupported. Ms. Smith has not articulated, nor can she,

1 how removing the Pierce Action caused delay, nor can she articulate how she has been improperly
 2 prejudiced by the defendants or this Court. This argument is even more unavailing considering Ms.
 3 Smith did not timely respond to Ms. Pierce's pending Motions to Dismiss until August 12, 2019,¹
 4 two months after her responses were due.

5 **C. The Fennemore Action and the Pierce Action are Nearly Identical.**

6 Ms. Smith's argument that the Fennemore Action and the Pierce Action are "different" is
 7 disingenuous. In an attempt to support this position, Ms. Smith contends that "Pierce was mainly
 8 acting in her individual capacity when she engaged in the actions asserted in Ms. Smith's
 9 Complaint," and "Fennemore Craig is being sued in their capacity as a law firm who engaged in
 10 and had employees (even those who are not attorneys) engaged in the conspiracy to target Ms.
 11 Smith." Stated differently, Ms. Smith contends that the Fennemore Action and Pierce Action are
 12 sufficiently distinct so as to not consolidate them solely based on the fact that Ms. Smith sued Ms.
 13 Pierce (a Fennemore attorney) in her individual capacity, and Fennemore in its capacity as an
 14 employer of Ms. Pierce, among others.

15 Ms. Smith relies upon inapposite caselaw to support her theory. In *E.E.O.C. v. Pan Am.*
 16 *World Airways, Inc.*, the Northern District of California court declined to consolidate two related
 17 actions because, despite having considerable factual overlap, they presented entirely different
 18 questions of law. C-81-3636 RFP, 1987 WL 97215, at *2 (N.D. Cal. Dec. 3, 1987). Specifically,
 19 one of the actions raised an Age Discrimination in Employment Act (ADEA) claim, while the other
 20 action raised claims for breach of a collective bargaining agreement and breach of the duty of fair
 21 representation. *Id.* In supporting its decision to decline consolidation, the court explained that
 22 introducing evidence related to claims for breach of a collective bargaining agreement and breach
 23 of the duty of fair representation and "elucidating the law applicable therein would inject substantial
 24 intricacy into an already complex trial." *Id.*

25 Unlike the *E.E.O.C.* case, here, Ms. Smith alleges nearly identical causes of action against
 26 Ms. Pierce and Fennemore. In her operative complaints, Ms. Smith has alleged the following causes
 27 of action against both Ms. Pierce and Fennemore: Intentional Infliction of Emotional Distress,
 28

¹ See ECF No. 55.

1 Defamation/Defamation Per Se, Slander/Slander Per Se, and Permanent Injunctive Relief.
 2 Although Ms. Smith also asserts causes of action for abuse of process, malicious prosecution, and
 3 violation of 42 USC § 2000a and NRS 651 in the Pierce Action, and for civil conspiracy in the
 4 Fennemore Action, a cursory review of Ms. Smith's allegations demonstrate that they are all
 5 premised on the same underlying alleged facts. And perhaps most tellingly, Ms. Smith has moved
 6 for leave to amend both complaints, requesting to add claims for breach of confidentiality, abuse
 7 of process, and malicious prosecution in the Fennemore Action [ECF No. 29 in the Fennemore
 8 Action], and breach of confidentiality and civil conspiracy in the Pierce Action [ECF No. 57].
 9 While amendment to each of Ms. Smith's respective complaints would be futile, as explained in
 10 detail in the respective responses to each of Ms. Smith's Motions for Leave to Amend, Ms. Smith
 11 even now attempts to assert the same seven causes of action against both Fennemore and
 12 Ms. Pierce. Thus, the only alleged non-duplicative claim is Ms. Smith's claim for violation of 42
 13 USC § 2000a and NRS 651. And because this claim is again based on the same underlying alleged
 14 facts, it is indisputable that it would not add substantial intricacy to this matter. *See e.g., Zimmerman*
 15 *v. GJS Group, Inc.*, 2:17-cv-00304-GMN-GWF, 2018 WL 1512603, at *2 (D. Nev. Mar. 27, 2018)
 16 (common questions of law render cases appropriate for consolidation); *In re W. States Wholesale*
 17 *Nat. Gas Antitrust Litig.*, 2:03-cv-01431-PMP-PAL, 2010 WL 2426031, at *1 (D. Nev. June 4,
 18 2010) (finding consolidation appropriate where the actions involve common questions of law and
 19 fact).

20 **D. Consolidating the Fennemore Action and the Pierce Action will Promote**
 21 **Judicial Efficiency and will not Prejudice any Party.**

22 Consolidating the Fennemore Action and the Pierce Action will only serve to promote
 23 efficiency for both the Court and the Parties. Ms. Smith makes no effort to explain how
 24 consolidating the two actions will "only guarantee delay, confusion, and prejudice." If anything,
 25 the opposite is true. Consolidating the two actions will allow the respective parties to limit filing
 26 duplicative, substantially similar briefs in separate actions. This will, in turn, limit the Court having
 27 to consider and decide parallel motions, while simultaneously limiting the possibility of
 28 inconsistent results.

Ms. Smith's contention that the cases are at "different stages in litigation" is likewise patently untrue. Fennemore and Ms. Pierce have filed comparable motions to dismiss in both actions. Fennemore and Ms. Pierce have also filed similar motions to stay discovery in both actions. And as of now, discovery has opened in both cases on a substantially similar timeline (the discovery deadline in the Fennemore Action is December 2, 2019 [ECF No. 17 in the Fennemore Action], and the discovery deadline in the Pierce Action is January 24, 2020 [ECF No. 44]).

In fact, Ms. Smith's recent discovery efforts in the Fennemore Action explicitly demonstrate why consolidation is not only appropriate, it is necessary. In the Fennemore Action, Ms. Smith issued a deposition subpoena to Ms. Pierce as opposed to simply noticing her deposition in the Pierce Action. By doing so, Ms. Smith is either trying to prevent the other defendants in the Pierce Action from participating in Pierce's deposition, or is trying to get two bites at the proverbial apple by deposing Ms. Pierce twice. Both reasons are improper and exemplify the very actions that Federal Rule of Civil Procedure 42 is designed to prevent. Contrary to Ms. Smith's argument, this example highlights the inefficiencies and prejudice to defendants that consolidating these actions would prevent.

Moreover, in the Fennemore Action, Ms. Smith issued subpoenas to employees of Caesars and/or PHWLTV, (which entities are co-defendants of Pierce in the Pierce action), improperly seeking communications between Fennemore and Caesars/PHWLTV employees, which would be privileged, and requesting the production and search of their personal cell phones and personal computers. The impropriety of these subpoenas is compounded by Ms. Smith's attempt to preclude Caesars' involvement in discovery in the Fennemore Action, given that Caesars holds the privilege regarding these communications. *See* August 13, 2019, e-mail from L. Smith to A. Fugazzi, attached as **Exhibit A**. In her email objecting to Caesars' counsel's participation in the meet and confer process, Ms. Smith states:

I will not be conferencing with Mr. Clayton [counsel for Caesars, PHWLTV, and Ethan Thomas] as the subpoenas do not concern his case. Yesterday you did not state anything about joining another unrelated party and the meet/confer will not be going forward with such a separate party, in a separate case and under the jurisdiction of a separate court. If you choose to conference Mr. Clayton at 5PM, I will not be present. I will be present at 5PM for a meet and confer with Fennemore Craig. The meet and confer is concerning Smith

1 v. Fenn in Federal Court. That's all. Again, Mr. Clayton does not represent
 2 Fennemore Craig. Please give Mr. Clayton, who respectfully does not contact
 me via email, the courtesy of knowing this as well.

3 Ex. A. From these examples, it is apparent that the consolidation of the Fennemore Action and the
 4 Pierce Action is necessary to protect all parties' interests while promoting efficiency and limiting
 5 the unnecessary expenditure of resources.

6 **III. CONCLUSION**

7 For each of these reasons, the Court should consolidate the Fennemore Action and the
 8 Pierce Action. Both cases are nearly identical factually, legally and procedurally. The Defendants
 9 in both actions have filed substantially similar motions to dismiss, and discovery has just begun in
 10 each lawsuit (with similar motions to stay discovery pending in both). Accordingly, for purposes
 11 of judicial efficiency and given that prejudice will only occur if consolidation is not granted, it is
 12 appropriate for the Court to consolidate the cases at this juncture.

13
 14 Dated: August 19, 2019.

SNELL & WILMER L.L.P.

15
 16 By: /s/ Michael Paretti

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 19 *Attorneys for Defendant Shannon Pierce*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT SHANNON PIERCE'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CASES** by method indicated below:

☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

Latonia Smith (*in Pro Per*)
9748 Canyon Landing Ave.
Las Vegas, NV 89166
Tel: (702) 521-3522

☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

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DATED this 19th day of August, 2019.

An employee of SNELL & WILMER L.L.P.

INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
A	August 13, 2019, e-mail from L. Smith to A. Fugazzi	6

4823-7407-6832

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